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Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Office of Emergency Medical Services
Virginia Administrative Code (VAC) citation	12 VAC 5-66-10, 12 VAC 5-66-30, 12 VAC 5-66-40, 12 VAC 5-66-50, 12 VAC 5-66-60, 12 VAC 5-66-70, 12 VAC 5-66-80.
Regulation title	Regulations Governing Durable Do Not Resuscitate Orders (DDNR)
Action title	Amend the current DDNR regulations to improve processes by clarifying regulations which will provide consistent care throughout the healthcare continuum.
Date this document prepared	September 16, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Office of EMS (OEMS) has been reviewing the current process used to carry out the intent of Virginia law that provides a person with the opportunity to execute a Durable Do Not Resuscitate and have qualified health care providers honor his or her wishes. An in-depth assessment of the current program was performed and feedback from constituent groups and organizations was obtained. Changes to the process as proposed in the revised regulations were considered by stakeholders to be of benefit in improving the Durable DNR program.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 54.1-2987.1 Durable Do Not Resuscitate Orders.

- A. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.
- B. This section shall not authorize any health care provider or practitioner to follow a Durable Do Not Resuscitate Order for any patient who is able to, and does, express to such health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest.

If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute revocation of the Order; however, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

- C. Durable Do Not Resuscitate Orders issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and regulations promulgated by the Board of Health, (i) qualified emergency medical services personnel as defined in § 32.1-111.1 and (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the Board of Health or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency are authorized to follow Durable Do Not Resuscitate Orders that are available to them in a form approved by the Board of Health.
- D. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw treatment if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing treatment pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

- E. For the purposes of this section:

"Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

A. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practice.

B. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this article.

(1992, c. 412; 1994, c. 956; 1998, cc. 564, 628, 630, 803, 854; 1999, c. 814.)

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The logistics of the current Durable DNR process are not allowing for patient's wishes at the time of cardiac or respiratory arrest to be honored as envisioned in § 54.1-2987.1. By providing clearer regulations and increasing the availability of the authorized State Durable DNR Order Form through a modernized delivery, the Office of EMS believes patient's rights to choose how their health care is delivered will be better followed.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

12 VAC 5-66-10 Definitions – Amend definitions to include correct nomenclature and new terms.

12 VAC 5-66-30 Purpose of regulations – amend to include all citizens.

12 VAC 5-66-40 The authorized Durable Do Not Resuscitate Order Form – Amend to clarify the use of jewelry authorized to be honored en lieu of the Durable DNR Order Form; clarify the displaying/availability of the Durable DNR Order Form; allow the use of legible photocopies of an original Durable DNR Order Form, clarify the documentation that should travel with a patient outside their home or health care facility; allow for the current state form, which is printed on yellow security and distributed by OEMS, to be a standardized form that can be downloaded on-line similar to Tennessee, Texas, New York and California.

12 VAC 5-66-50 Authorized Alternate Durable DNR Jewelry – Amended to provide clearer language used to describe the use of authorized Durable DNR bracelets and necklaces.

12 VAC 5-66-60 Other DNR Orders – This amendment makes it clear that qualified health care providers can follow written physician DNR orders on forms other than the standard state Durable DNR Order

Form. An example is a form developed within a health care facility or system that contains the same information as the state Durable DNR Order Form.

12 VAC 5-66-70 Issuance of a Durable DNR Order – Amended to further clarify the use of the State Durable DNR Order Form, Alternate Durable DNR Order Jewelry, or Other DNR Order. This clarifies what is to be contained within a valid DNR order and provide patient education on alternatives for DNR or revocation of a DNR order.

12 VAC 5-66-80 Durable DNR Order Form Implementation Procedures – Amended to provide clarifying instructions to qualified health care personnel on how to carry out providing or withholding care consistent with the wishes of the patient.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Office of EMS works with its constituents and stakeholders to review and submit regulatory language that reflects upon the current quality health care practices within the Commonwealth. This process has included other related regulatory agencies. Failure to adopt these amendments will result in the continuation of a program that is confusing to health care providers, leads to conflict between medical disciplines, and does not always allow the honoring of patients rights during a cardiac or respiratory arrest.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Mr. Paul M. Sharpe, Trauma/Critical Care Coordinator, 109 Governor street, UB-55, Richmond, Virginia 23219, (804)864-7580 (fax), or paul.sharpe@vdh.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.}

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Office of EMS continues to utilize a participatory process as a means to solicit input, ideas and feedback regarding the proposed changes to the Durable DNR regulations. Other health care disciplines outside of the pre-hospital environment will continue to have their input elicited.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory amendments will greatly benefit affected patients and their families. The amendments increase the probability of honoring patient's rights to make decision about their own health care. Additionally, a patient and/or family that have made the determination that at the time of their death it is in their best interest not to receive, what will probably be futile, life saving procedures and will likely have this most significant lifespan event occur in a manner better accepted by them and their family. Also, by assuring a DNR request is honored, it will save surviving families significant resources.

Commenter	Comment	Agency response

Enter statement here